IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

MONDAY, THE 2ND APRIL 2007 / 12TH CHAITHRA 1929

WP(C).No. 8195 of 2004(A)

PETITIONER:
----

1. **THE MANAGING DIRECTOR, KERALA TOURISM DEVELOPMENT CORPORATION LIMITED MUSCOT SQUARE THIRUVANANTHAPURAM.**

2. **THE MANAGER, HOTEL MALABAR MANSION, S.M.STREET, K.T.D.C. KOZHIKODE.**

BY ADV. SRI.B.GOPAKUMAR, SC, K.T.D.C.

RESPONDENTS:
----

1. **DEVARAJAN.N., NADUKANDI HOUSE, P.O.VENGERI, CALICUT - 10.**

2. **DEPUTY LABOUR COMMISSIONER AND THE APPELLATE AUTHORITY UNDER THE KERALA SHOPS AND COMMERCIAL ESTABLISHMENT ACT 1960, KOZHIKODE.**

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.8195/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER IN SA. NO.6/96 DT.21.11.03.

EXT.P2:- COPY OF THE APPLICATION DT.3.8.96.

EXT.P3:- COPY OF THE COUNTER STATEMENT DT.26.10.96.

/TRUE COPY/

tss

KURIAN JOSEPH, J.

- -

W.P.(C)NO.8195 OF 2004

- -

Dated this the 2nd day of April 2007

JUDGMENT

Challenge is on Ext.P1 order passed under the provisions of the Kerala Shops and Commercial Establishments Act, 1960. The first respondent herein approached the second respondent/Appellate authority under the Act alleging illegal termination as per Ext.P2 application. The contention was that he was employed as waiter from 23-1-1995 to 22-7-1996 and thereafter he was denied employment. The application was filed on 3.8.1996. The petitioner filed Ext.P3 objection mainly contending that the Malabar Mansion is a unit of Kerala Tourism Development Corporation and a Government undertaking and hence the provisions of the Act would not apply. On facts it was contended that the first respondent was there only for 74 days as casual worker on daily wages and for that reason also, the petition should have been dismissed as not maintainable. The second respondent has not addressed itself on these two crucial aspects. Unless the question of

maintainability is considered, there is no point in considering the merits of the case.

Therefore, this writ petition is disposed of quashing Ext.P1 order and directing the second respondent to first decide whether the Kerala Tourism Development Corporation would come within the purview of the Act. If only the answer is in the affirmative, the second issue referred to above length of service should be considered. Only after considering the above two aspects the appeal shall, if required, be considered on other merits. Appropriate orders as above shall be passed, with notice to the first respondent and the Kerala Tourism Development Corporation, within a period of four months from the date of receipt of a copy of this judgment.

KURIAN JOSEPH, JUDGE

jes